Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the matter of	)	
	)	
Amendment of Part 90 of the	)	PR Docket No. ~~93-144~~
Commission's Rules to Facilitate	)	RM-8117, RM-8030
Future Development of SMR Systems	)	RM-8029
in the 800 MHz Frequency Band	)	
and		
Implementation of Section 309(j)	)	
of the Communications Act -	)	PP Docket No. 93-253
Competitive Bidding	)	
800 MHz SMR	)	

To: The Commission

REPLY COMMENTS OF NEXTEL COMMUNICATIONS, INC.

NEXTEL COMMUNICATIONS, INC.

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SUMMARY

This proceeding is about competition. The Federal Communications Commission (the "Commission") has stated that its primary regulatory objective today is to foster competition. It commenced this rule making in response to the Congressional mandate in the Omnibus Budget Reconciliation Act of 1993 to foster competition among Commercial Mobile Radio Services ("CMRS") providers by establishing a level regulatory playing field for all CMRS services.

The Commission is well along in deregulating cellular providers and has adopted remarkably flexible rules for Personal Communications Services ("PCS") providers. This rule making offers the Commission a unique opportunity to follow through on the wide-area Specialized Mobile Radio ("SMR") licensing initiatives it began nearly four years ago by adopting rules that will enable wide-area SMRs to effectively compete with cellular and PCS providers. By promoting competition, the Commission can free CMRS providers to offer a rich and diverse array of new wireless communications capabilities for the American people.

Almost four years ago, the Commission authorized Nextel Communications, Inc. ("Nextel") (then Fleet Call, Inc.), to reconfigure its existing analog, single-site SMR stations into a digital, multiple base station network employing frequency reuse to achieve unprecedented efficiency gains, improved service quality and new integrated mobile communications services. Since then, Nextel and other wide-area providers have committed hundreds of millions of dollars to bring advanced, digital wide-area SMR

service to California, Chicago, New York, Denver, Seattle/Portland and the Baltimore-Washington area this year and to implement a nationwide network by the end of 1996. Wide-area SMRs are fulfilling the Commission's hope that they would introduce innovative, spectrally efficient technologies and offer competition to the entrenched wireless providers.

This rule making is intended to eliminate the regulatory disparities now imposed on wide-area SMRs in competing with CMRS providers. Wide-area SMRs must have access to exclusive-use contiguous channels assigned on a geographic area basis -- like those assigned to every other broadband CMRS provider -- if they are to have the technology options necessary to be legitimate, long-term competitors. The public benefits from real competition because it results in lower rates, innovative services and lessened regulation.

Achieving regulatory symmetry for wide-area SMRs is complicated by the existing diversity of SMR services and providers. Accordingly, in these reply comments, Nextel proposes a comprehensive licensing framework that offers competitive opportunities to all SMRs -- both wide-area providers and those choosing to offer local service. It proposes licensing wide-area SMRs on the upper 200 contiguous SMR channels based on Metropolitan Trading Areas ("MTAs") or, as part of an industry consensus, Economic Areas ("BEAs"), as defined by the U.S. Department of Commerce's Bureau of Economic Affairs, with mandatory retuning of non-affiliated incumbents that fail to take advantage of voluntary

relocation incentives within a defined time period. No incumbent would be required to be retuned, however, unless the wide-area licensee (auction winner) can offer comparable alterative 800 MHz frequencies and pays all reasonable retuning costs. Nextel's proposal would also create new SMR blocks giving local SMRs enhanced opportunities to operate and to form networks of their own in response to dynamic marketplace demand. After retuning the upper 200 channels, the proposal calls for licensing remaining SMR spectrum on a BEA basis using competitive bidding.

This proposal would complete 800 MHz SMR licensing, thereby freeing the Commission from continuing to administer cumbersome and inefficient site-by-site licensing of SMRs. There is a consensus among much of the industry supporting these general provisions, as reflected in the reply comments of the American Mobile Telecommunications Association.

No commenter other than Nextel proposed a feasible plan for transitioning from site-by-site SMR licensing to the geographic area licensing on contiguous spectrum necessary to achieve parity with other broadband CMRS services. At one extreme, SMR WON proposes a spectrum entitlement program for its members. SMR WON advocates that the Commission give its members what amounts to a mini-wide-area license on clear spectrum, but without paying for it through competitive bidding and without being responsible for the costs of retuning non-affiliated incumbents. At the other extreme, the Personal Communications Industry Association ("PCIA") opposes any SMR auctions and would block the development of wide-area SMRs

and regulatory symmetry among CMRS competitors to protect local SMRs from competition. PCIA's position is irreconcilable with its leadership role in relocating 2 GHz microwave incumbents to make way for advanced PCS services and would unnecessarily continue the Commission's SMR licensing burden. The Commission should recognize these extreme positions for what they are -- desperate efforts to protect competitors, rather than competition -- and should expeditiously adopt the comprehensive SMR licensing framework set forth herein.

The wireless telecommunications industry is in the midst of radical change. New technologies and exploding customer demand are driving new investment and rapid innovation in wireless services. SMRs, however, are hampered from fully competing with other CMRS providers by spectrum and technological disadvantages stemming from a legacy of regulations that were not designed for the dynamic wireless marketplace of the future. Sound, pro-competitive public policy compels that these impediments to competition be removed to the maximum extent possible.

The SMR licensing framework proposed herein would establish a level regulatory playing field among SMRs and other CMRS providers. Adopting it would reduce the Commission's SMR licensing burden, provide greater radio spectrum auction fees to the United States Treasury and, most importantly, free SMRs to introduce new, more efficient, competitive wireless communications services for American consumers.

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REPLY COMMENTS OF NEXTEL COMMUNICATIONS, INC.

I. INTRODUCTION

This proceeding presents the Federal Communications Commission (the "Commission") with a unique opportunity to adopt a regulatory framework which will result in the introduction of new wireless communications services, enhanced competition in the wireless marketplace, reduced administrative burdens on the Commission, and greater radio spectrum auction fees to the U.S. Treasury.

Pursuant to Rule 1.415 of the Commission's Rules, Nextel Communications, Inc. ("Nextel") respectfully submits its Reply Comments in this proceeding. Nextel addresses how the Commission can best achieve all of the above-listed results and responds to

the comments of parties that would obstruct these accomplishments.1/

In this rule making, the Commission proposes to revise and streamline the licensing rules for Specialized Mobile Radio ("SMR") systems -- both traditional SMRs and wide-area SMRs. A new, properly designed wide-area SMR licensing scheme will facilitate the introduction of new and more efficient SMR technology to provide additional mobile communications services to the public, ensure that all broadband Commercial Mobile Radio Service ("CMRS") providers compete under a similar regulatory regime as required by Congress in the Omnibus Budget Reconciliation Act of 1993 ("Budget Act")2/, and prevent recurrence of the current SMR licensing morass burdening the Commission.

To achieve regulatory parity among competing CMRS providers, wide-area SMRs must be (1) licensed on a geographic area basis similar to cellular and, prospectively, Personal Communications Services ("PCS"); (2) authorized a contiguous block of spectrum throughout that geographic area equivalent, to the extent feasible, to the cellular and PCS assignments; and (3) given the right, where necessary, to retune incumbent licensees to obtain the contiguous, exclusive-use "clear" spectrum necessary to implement the advanced broadband wireless technologies that will be used by cellular and PCS providers. The Commission's statutory mandate to promote the

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1/ Nextel and more than 80 other parties filed Comments herein on January 5, 1995.

2/ Omnibus Budget Reconciliation Act of 1993, Pub. L. No. 103-66, Title VI, §6002(b)(2)(B), 107 Stat. 312, 392 (1993).

introduction of more efficient wireless technologies,3/ and to create regulatory symmetry among competing CMRS services, requires that wide-area SMR licensees be able to obtain the exclusive-use, contiguous spectrum necessary to implement the advanced technology options available to their CMRS competitors.4/

The Commission's fundamental statutory obligation is to promote the introduction of more efficient wireless technologies, new services and heightened competition.5/ It must not permit the existence of systems and equipment based on 20-year old rules to obstruct the availability to the American people of new, more efficient technology and advanced mobile communications services.6/ Additionally, to simplify and streamline the current SMR licensing nightmare, new wide-area SMR licenses must be granted through competitive bidding -- the only practical and legal option

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3/ 47 U.S.C. Sections 7 and 303(g).

4/ The Wireless Telecommunications Bureau ("Bureau") recently restated the Commission's conclusion that wide-area SMRs will compete with other CMRS providers. *See* Applications of Nextel Communications, Inc. for Transfer of Control of OneComm Corporation, N.A. and C-Call Corp., DA 95-263, released February 17, 1995, at paras. 26-29 (hereinafter, the "Nextel/OneComm Order.")

5/ Remarks of Commissioner Ervin S. Duggan at the February 13, 1991 Commission Open Meeting, recognizing the Commission's "sworn duty" to support technological innovation, efficient use of the spectrum, improved service by licensees and heightened competition.

6/ Of course, incumbent SMRs must be made whole by the wide-area licensee in accordance with the spectrum clearing procedures established for the emerging technologies bands to accommodate the introduction of PCS.

for licensing this spectrum given the high probability of mutually exclusive applications.7/

Wide-area advanced SMR networks using digital technology are the future of the SMR industry. A recent study by the American Mobile Telecommunications Association ("AMTA") and Economic and Management Consultants International, Inc. ("EMCI") (the "AMTA/EMCI Study") found that 80% of all estimated growth in the SMR industry through 1999 will occur on digital systems.8/ Between 1994 and 1999, EMCI forecasts that **digital** SMR subscribers will increase from 14,000 to approximately two million.9/ In other words, SMR entrepreneurs are implementing wide-area digital SMR systems in response to technological progress and the public's demand for new and improved services. As mandated by the Budget Act, the SMR regulatory framework must now "catch up" with these marketplace developments and assure these emerging wireless providers licensing symmetry with other generally substitutable CMRS services. As stated by Dr. Janusz Ordover, in the attached study of the economic

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7/ *See* Third Report and Order, 9 FCC Rcd 7988 (1994) ("Third Report and Order"), at paras. 97-99. Under the Budget Act amendments to the Communications Act, the Commission can grant licenses among mutually-exclusive applications for this service only through comparative hearings or competitive bidding. Neither the Commission nor any party has expressed any support for comparative hearings.

8/ "The State of SMR and Digital Mobile Radio 1994-1995," by Malarkey-Taylor Associates, EMCI and AMTA (the "AMTA/EMCI Study") at p. 3.

9/ *Id.*

consequences on potential CMRS competition of the SMR licensing proposals at issue in this proceeding,10/

> "The fundamental premise underlying the deregulatory proposals embodied in PR Docket No. 93-144 has been that there exists a paramount public interest in creating regulatory parity between 800 MHz SMR and other wireless telecommunications vendors in the CMRS category. In the absence of such regulatory parity, the beneficial consequences of competition among various participants in the evolving CMRS marketplace will be stunted, or may never materialize."11/

II. NEXTEL'S PROPOSAL FOR A COMPREHENSIVE SMR LICENSING FRAMEWORK

Nextel is one of the largest providers of both traditional analog dispatch and wide-area digital SMR services in the country. Nextel is reconfiguring many of its traditional single high-power site SMR systems into advanced, digital, frequency-reuse networks providing at least 15 times more user capacity and offering new and improved services. Nextel's interconnected SMR systems were reclassified as CMRS in the Commission's Second Report and Order in GN Docket No. 93-252.12/

10/ The study is entitled, "The Economic Implications of Licensing Specialized Mobile Radio Systems on a Contiguous Spectrum, Geographic-Area Basis" and is included herein at Attachment A. The principal author of the study, Dr. Janusz Ordover, is a former Deputy Assistant Attorney General for Economics in the Antitrust Division of the U.S. Department of Justice and a recognized expert on the economics of the telecommunications industry.

11/ *Id.* at p. 3.

12/ Second Report and Order, 9 FCC Rcd 1411 (1994) at para. 90. The Commission likewise classified cellular and, presumptively PCS, as CMRS services. *Id.* at paras. 102 and 119.

Nextel firmly supports the Commission's efforts to establish a licensing framework for wide-area SMRs which will provide the licensing and spectrum access parity necessary to compete with other broadband CMRS services while preserving opportunities for local SMRs. In its comments, Nextel supported an SMR licensing framework incorporating much of the Commission's own proposal and providing competitive opportunities for both wide-area SMRs and local SMRs. Nextel offered a comprehensive plan for rationalizing licensing on all 530 channels allocated to the former private land mobile radio service used by SMR systems. It would carry out the Commission's conclusion to license wide-area SMRs on a Major Trading Area ("MTA") basis using competitive bidding procedures. Specifically, Nextel proposed:

(1) licensing wide-area SMRs on the upper 200-channel contiguous block on an MTA-basis using competitive bidding to select among mutually exclusive applications;

(2) creating new SMR blocks from the 150 General Category channels and the 50 Business channels; and

(3) after an initial six-month voluntary retuning period with delineated incentives,13/ a six-month mandatory retuning (without incentives) of all incumbents in the MTA area to the new SMR blocks or the lower 80 SMR channels provided

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13/ Six months is sufficient given the express assurance that no retunee will be required to move if comparable facilities and channels are not available. The Personal Communications Industry Association ("PCIA") promoted a similar voluntary relocation period, for the same reasons, in the Emerging Technologies proceeding. *See* Further Comments of Telocator (now PCIA), filed January 3, 1993 in ET Docket No. 92-9, at p. 7 ("Given the rules' absolute provisions that no incumbent licensee need ever move if the relocation will cause technical or economic harm, the Commission should establish the shortest possible time frame for voluntary relocations.")

comparable channels are available at the retunee's station location(s).14/

This proposal assures a fair and equitable transition for licensees retuned out of the wide-area SMR block. To ensure that retunees are not adversely affected by retuning, and to further enhance the potential for voluntary retuning, Nextel proposed that incumbents who voluntarily agree to retune would receive the following benefits:

- tax certificates;
- prospective 70-mile co-channel protection;
- no future retuning of these licensees; and
- the authority to freely transfer all of these rights along with the license.

All of these benefits are in addition to the following assurances provided retunees (both voluntary and involuntary): (1) all costs of retuning would be borne by the wide-area licensee and (2) no incumbent would be retuned unless comparable facilities on comparable channels can be provided. An incumbent who cannot be retuned because comparable facilities are not available, would be permitted to modify its facilities within the wide-area block in a manner that is consistent with its existing coverage and interference contours.

14/ Nextel also proposed deferring retuning in non-congested areas until the Commission creates the new SMR Blocks, and limiting wide-area licensees post-retuning to the 280 trunked SMR channels in non-congested areas only for five years. In light of the evolving industry consensus and alternatives to its proposal discussed below, Nextel no longer advocates these positions.

Since submitting its comments, Nextel has participated in extensive negotiations with all segments of the private land mobile industry in an attempt to achieve consensus among all affected parties on a revised licensing framework. In these Reply Comments, Nextel submits certain alternatives to its proposal as part of a consensus for a new SMR licensing framework that would provide wide-area SMRs with geographic-based licenses and contiguous spectrum, including Commission-mandated retuning of incumbents where necessary for the wide-area licensee to obtain exclusive use of the wide-area spectrum block.

A significant number of commenters prefer licensing SMRs -- particularly on the channels below the top 200 -- on a geographic area basis by Bureau of Economic Analysis Economic Areas or "BEAs," as defined by the Bureau of Economic Analysis of the United States Department of Commerce. While Nextel continues to support the Commission's decision to license wide-area SMRs by MTAs, it would support using BEA-based licensing for both wide-area and local SMRs only as part of a comprehensive plan to establish a contiguous frequency block for the exclusive use of wide-area SMRs.

Accordingly, as an alternative to MTA-based licensing, Nextel would support licensing wide-area SMRs on a single 200-channel block on a "Cluster BEA basis" in groups of four BEAs.15/ The BEA clusters would be created by combining BEAs in numerical order

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15/ This would require the Commission to modify its decision in the Third Report and Order to license wide-area SMRs on an MTA basis. Petitions for Reconsideration of the Third Report and Order are pending.

in groups of four, beginning with BEA Nos. 1,2,3 and 4 and continuing in that manner. Chart I, which is located on the following page, depicts the resulting 45 Cluster BEAs.16/ Cluster BEAs would be large enough to allow for the introduction of competitive wide-area SMR services and, like MTAs, would provide licensing parity with competing broadband CMRS services licensed on a geographic basis.

Cluster BEAs also provide a readily-partitionable geographic area, increasing the flexibility of the wide-area licensee to enter into partitioning arrangements with other licensees. The Commission should permit maximum flexibility for SMRs to participate in bidding consortia for wide-area Cluster BEA licenses and to permit the auction winner to subdivide its Cluster BEA license among consortia participants along BEA lines.17/ Given the 174 BEAs nationwide, the resulting 45 Cluster BEAs (counting Hawaii and Alaska as two separate Cluster BEAs) also provide an administratively manageable number of wide-area SMR license auctions on a single 200-channel block basis.18/

16/ The result of clustering the continental United States is 43 Cluster BEAs. However, Alaska and Hawaii would be treated as two individual Clusters, resulting in a total of 45 BEA Clusters for wide-area licensing.

17/ For example, parties wishing to participate in wide-area services, but who believe that even the Cluster BEA is too large, could participate through consortia, arrangements with the wide-area SMR licensee to partition or subdivide, or other arrangements made possible by flexible auction and licensing rules.

18/ Conversely, licensing wide-area SMRs on only a BEA basis would not only produce insufficiently large service areas, but excessive numbers of auctions, particularly if the Commission were to license wide-area SMRs on four 50-channel blocks.

CLUSTER BEAs

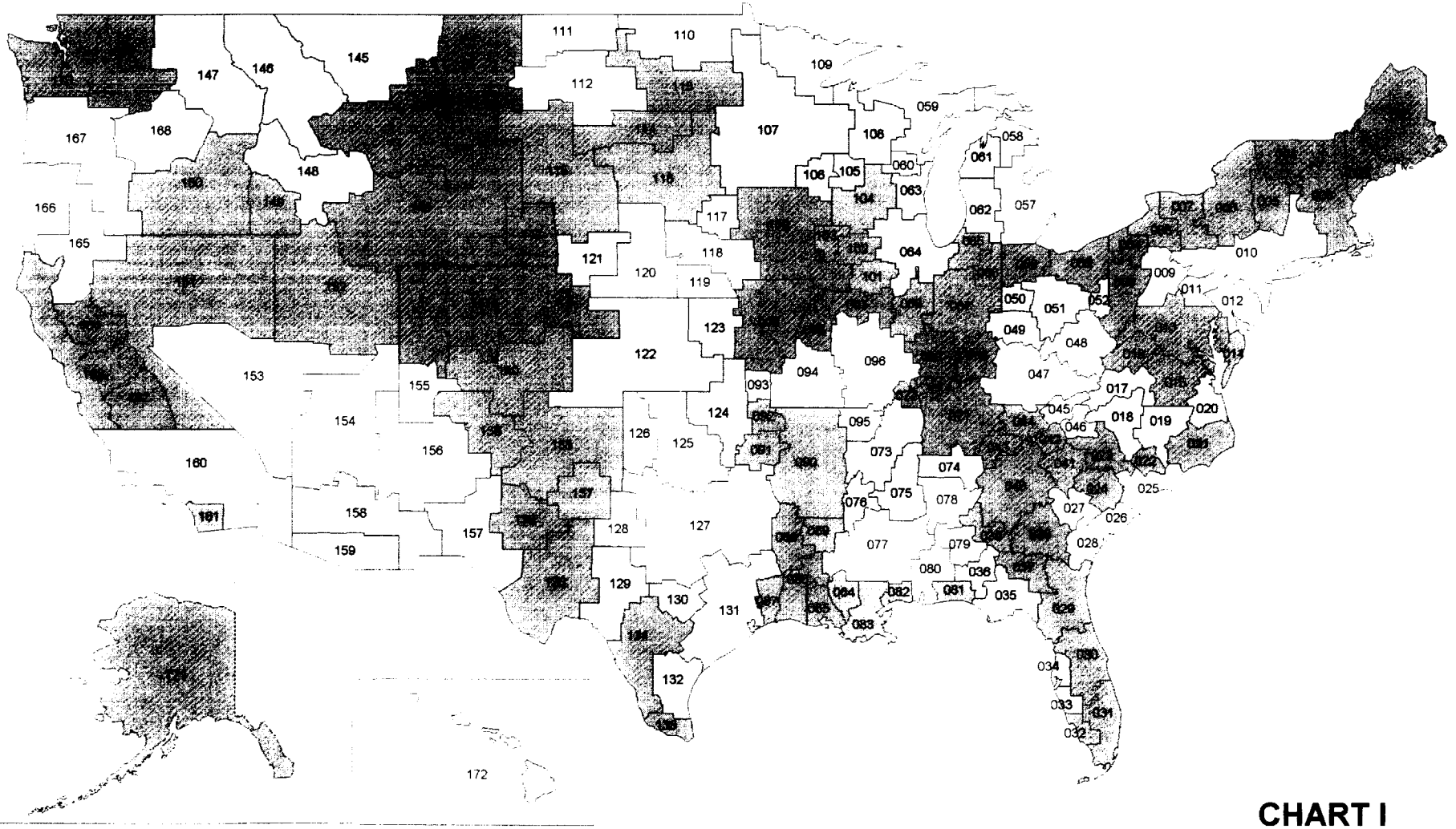

CHART I

After retuning is completed, BEAs in the 80 SMR channels and the new SMR blocks would be auctioned on a single channel basis. This would allow local SMRs to aggregate coverage to create regional or wide-area systems if they so desire. In combination with wide-area Cluster BEA licensing, this would eliminate the Commission's SMR licensing burden on 480 of the 530 channels that can be used by SMRs.

Thus, local SMR licensing would be completed after wide-area retuning and auctioning the lower 80 SMR channels and 150 General Category channels on a BEA basis.19/ In contrast, permitting the new SMR blocks to be licensed on a site-by-site basis would inevitably continue to flood the Commission with thousands of additional applications. Under the Commission's SMR co-channel separation rules, applicants would continue to "shoehorn-in" stand-alone low power, low tower stations that could not possibly be viable commercial operations, but that the Commission would be obliged to process. Additionally, with site-specific licensing, operators wishing to implement low power frequency reuse techniques on these channels would be forced to file thousands of implementing applications again immersing the Commission in an SMR processing morass. Anything other than auctioning the remaining SMR spectrum on a geographic-area basis will assure continuation of the Commission's SMR licensing burden.

19/ Nextel continues to propose that the 150 General Category channels be prospectively licensed exclusively for SMRs.

The new SMR licensing framework summarized above -- using either MTAs or Cluster BEAs and BEAs -- would provide a practical framework for transitioning from current site-by-site licensing to a geographic area licensing plan that will complete SMR licensing and prevent future SMR licensing backlogs. It would provide geographic area licenses for wide-area SMRs authorizing the exclusive-use, contiguous spectrum necessary to compete in the CMRS marketplace. It would protect the viability of local SMRs by assuring them adequate spectrum opportunities and operating flexibility to grow their systems, and would reward relocated incumbents with greater geographic flexibility. It would ensure the most efficient and effective use of the spectrum by both local and wide-area SMRs through prompt system implementation, reduce the regulatory hurdles currently faced by SMR providers that are not imposed upon SMR competitors, and eliminate the outmoded SMR licensing process and licensing morass currently burdening the Commission. As Dr. Ordover concludes, SMR block licensing:

> "will create a more effective platform than currently exists for the introduction and growth of new, spectrum-efficient technologies on the 800 MHz band . . . Consumers will benefit from the added capacity, improved functionality and broader geographic coverage these new systems will offer and from enhanced competition between SMR-based and other wireless service providers."20/

There is a growing consensus in the industry as reflected in AMTA's reply comments in support of the basic aspects of this new licensing framework; i.e., licensing wide-area SMRs on a geographic

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20/ *See* Attachment A at p. 2.

(BEA) basis while granting wide-area block voluntary retunees specified benefits to encourage their migration. This includes mandated migration after a specified period, provided that comparable spectrum is available and that the wide-area licensee is responsible for the costs involved in retuning.

Two commenters, however, have views that remain outside of the consensus and at the far extremes of comments in this proceeding. At one end is SMR WON, which asserts that the Commission must create a "relocation block" through some ambiguous "refarming" of the 800 MHz Business, Industrial/Land Transportation and lower 80 SMR channels.21/ SMR WON asks the Commission to give incumbents retuned from the upper 200 wide-area channels an exclusive, contiguous channel BEA license in this new relocation block.22/ To achieve exclusivity, it asks the Commission to remove existing licensees from the relocation block without compensation.23/ In

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21/ SMR WON would also raid the channels of wide-area licensees for its relocation block. It ignores the fact that the Commission has granted extended implementation to wide-area licensees, many of whom are in the first year or two of this period. As discussed herein, advanced wide-area systems cannot possibly be implemented in a one year time frame; thus, SMR WON asks the Commission to arbitrarily cancel and recover extended implementation grants -- despite the absence of evidence of abuse or other grounds -- as an "entitlement" for its members.

22/ In its Petition for Reconsideration of the Third Report and Order, which is attached to SMR WON's Comments herein as Exhibit B, SMR WON stated that *it* "would not even consider a wide-area auction proposal which did not, as a preliminary matter, clearly delineate a block of suitable spectrum for SMR communications" for relocation of incumbents. *See* Exhibit B of SMR WON's Comments at p. 11.

23/ Interestingly, SMR WON sets itself up on opposing sides of this single issue by advocating a relocation "premium" -- a (continued...)

other words, SMR WON is asking the Commission to give its members a mini-wide-area license on a BEA basis, but they don't want to pay for the license or to relocate displaced incumbents.24/ SMR WON apparently believes its members should be entitlement beneficiaries at the spectrum welfare trough.

At the other extreme is PCIA. It strongly opposes any auction of SMR spectrum, proposing instead a two-phased licensing giveaway. Phase I would allow existing licensees to "convert" their systems to wide-area operations on a maximum 10-channel block on a BEA or Metropolitan Statistical Area ("MSA") basis; Phase II would license areas and frequencies not already assigned to wide-area licensees. PCIA states that this would be fair to all SMRs; on the contrary, it is intended to block the development of technically and economically viable wide-area systems and to protect small operators from competition for as long as possible.25/ In

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23/(...continued)
"Geographic Competitive Equity Premium" -- for local SMRs retuned from the proposed upper 200 wide-area channels, yet not even proposing mere compensation for licensees it would dislodge to create the "relocation block."

24/ The contrast between SMR WON's position and wide-area licensees could not be more stark. Wide-area licensees are willing to engage in competitive bidding to have their existing site-by-site authorizations expanded to geographic licenses and are willing to pay the costs of retuning incumbents to gain exclusive spectrum. They also offer to implement more efficient advanced technologies and services. SMR WON asks to be given a geographic license for free and to be given exclusivity for free. All of this freely-acquired spectrum, moreover, would not necessarily be used to implement more efficient technology.

25/ PCIA opposes mandatory retuning; therefore, these limited systems would be further hindered by protecting all incumbents. This is irreconcilable with PCIA's previous support of relocation
(continued...)

reality, PCIA's proposal would relegate all SMRs to a secondary, non-competitive position in the CMRS marketplace in contravention of the Budget Act and to the detriment of consumers.

PCIA's position cannot be reconciled with its outstanding leadership role in promoting the creation of PCS including relocation of incumbent 2 GHz microwave licensees to create exclusive, contiguous PCS license assignments. The credibility of PCIA's position in this proceeding should be discounted accordingly.

III. ACHIEVING REGULATORY PARITY AND A COMPETITIVE MARKETPLACE THROUGH PROPER SMR LICENSING MODIFICATIONS

A. This Rule Making Can Enhance Wireless Competition Through Enlightened Rules And Policies.

The introduction of new mobile telecommunications technologies such as wide-area SMR and PCS presents the Commission with an opportunity to enhance competition in the wireless marketplace. It was the emergence of these new technologies and services which led to the passage of the Budget Act; the Commission's classification of cellular, PCS and wide-area SMRs, among others, as CMRS; and the Commission's adoption of the Third Report and Order in GN Docket

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25/(...continued)
in both the PCS proceeding and the proceeding to refarm spectrum below 800 MHz. *See* Comments of The National Association of Business and Educational Radio ("NABER"), now PCIA, filed May 28, 1993, in PR Docket No. 92-235. In a "White Paper" on refarming, submitted by NABER in the same proceeding, NABER listed among its goals, "Spectrum Efficiency and Increased Capacity, Workable Migration Plan and Streamlined Rules." *See* Letter to Ralph A. Haller, Chief Private Radio Bureau, from John J. Sherlock, dated May 4, 1993. In the refarming proceeding NABER/PCIA supports migrating incumbents to permit more efficient spectrum use; its position is inexplicably diametrically opposed herein.

No. 93-252, which initiated the process toward a level regulatory playing field for all CMRS.26/

In this proceeding, the Commission can energize CMRS competition through a structure that will provide the requisite regulatory parity for SMRs. The appropriate licensing changes will also provide a more realistic, workable set of rules for SMRs -- both local and wide-area -- to grow their operations, introduce new technologies, and provide effective competition in the CMRS marketplace. At the same time, these changes will help to resolve the SMR licensing morass that was created when technology and the industry, responding to marketplace forces, jumped ahead of the regulatory process. All of these competitive and administrative benefits can be achieved through a comprehensive framework for allocating and licensing the 530 800 MHz channels used by SMR providers.27/

26/ Third Report and Order at fn. 7, *supra*.

27/ The comments of Nashtel L.L.C. ("Nashtel") illustrate the need for a comprehensive solution including all 530 of the 800 MHz land mobile channels used by SMR systems. Nashtel, a newly formed company in Tennessee, describes itself as an SMR operator which manages five one-channel SMRs on General Category channels. *See* Comments of Nashtel at p. 2. A further illustration may be found in recent applications by local SMRs in the Idaho-Oregon-Washington State area for General Category and Industrial/Land Transportation Category channels for trunked SMR use. As detailed in Attachment B, these applicants, each of which are represented on the Board of Directors of SMR WON, seek to expand their trunked SMR systems using non-SMR channels. Thus, any new SMR licensing scheme must consider all 530 channels to encompass the multitude of SMR operators found therein.

B. Auctioning A 10 MHz License On An MTA or Cluster BEA Basis, Coupled With Mandatory Retuning Of Incumbents, Is Essential To Achieving The Commission's Objectives In This Proceeding.

1. The Commission is legally required to use competitive bidding to select among mutually exclusive applications for wide-area SMR licenses.

Some commenters assert that the Commission has no legal authority to auction wide-area licenses from among mutually exclusive applications, or that even if it does, it should not do so and continue its antiquated licensing process.28/ The Commission has already made this decision in its Third Report and Order, wherein it concluded that competitive bidding would "ensure that the qualified applicants who place the highest value on the available spectrum will prevail in the selection process" and, at the same time, ensure that there would be no delays in the licensing process.29/

Using auctions to license wide-area SMR systems is authorized by the Budget Act. Congress authorized competitive bidding for initial, mutually exclusive license applications for services that will be resold to subscribers.30/ Congress specifically excluded those licenses which were not to be subject to competitive bidding procedures: those for unlicensed services, those where only one application is filed, and renewal and modification applications.31/ None of these specifically excluded licenses

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28/ *See, e.g.*, Comments of PCIA at p. 19.

29/ Third Report and Order at paras. 341-342.

30/ Budget Act, Section 309 (j) (2).

31/ H.R. Rep. No. 103-111, 103rd Cong. 1st Sess. 253 (1993).

encompasses wide-area SMR licenses. Further, the Commission is not attempting to "re-license" this spectrum, as claimed by SMR WON.32/ On the contrary, the Commission is auctioning new MTA-based licenses for wide-area SMRs -- a license that is necessary to achieve regulatory parity among broadband CMRS providers.33/

2. Auctions are the only practical, legally available alternative to streamline, simplify and complete 800 MHz SMR licensing.

The Commission created the SMR industry in the late 1970's and determined that these systems should be licensed on a site-by-site basis. This methodology proved successful for many years. However, as new technologies were introduced and SMR operators began to react to these changes, as well as other marketplace forces, the SMR licensing process fell behind the progress of the industry.34/ In response to the demands of customers for wide-area service and relief from congested systems, potential wide-area SMR providers filed numerous licensing applications to establish

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32/ Comments of SMR WON at pp. 30-31.

33/ SMR WON claims that the Commission would have to "establish a Relocation Block for this service prior to adopting or holding of any auction." There is no legal basis for this assertion. Nowhere in the Budget Act did Congress establish a "Relocation Block" as a prerequisite to auction authority. On the contrary, the ongoing broadband PCS auctions will result in relocating incumbent microwave users not to any "relocation block," but simply to other frequencies allocated for fixed microwave use where those frequencies would provide comparable facilities. *See* Second Report and Order, 8 FCC Rcd 6495 (1993).

34/ *See* Comments of the AMTA at p. 13 ("The current system of site-specific, frequency-by-frequency licensing severely hampers entities seeking to provide efficient wide-area services to business customers and the general public. No other broadband CMRS is licensed in this manner.")